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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216808
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Auratone LLC)	
	)	Opposition No. 91216808
Opposer,)	
	)	Serial No. 85/647325
v.)	
)	
MUSIC Group IP Ltd.,)	
)	
Applicant.)	Attorney Docket No. 900195.837
)	

APPLICANT MUSIC GROUP IP LTD.'S
MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

MUSIC Group IP Ltd. (“MUSIC Group”) moves for summary judgement that the previously-cancelled AURATONE mark has been abandoned and that Auratone LLC’s (“Opposer”) opposition to MUSIC Group’s trademark registration application be dismissed. *See* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 528; Fed. R. Civ. P. 56. Auratone LLC’s opposition is premised on prior use of the AURATONE mark by Auratone LLC’s alleged predecessors-in-interest. But the undisputed facts show that the AURATONE mark was abandoned. Because Auratone LLC cannot rely upon any earlier trademark use, the Opposer has no priority over MUSIC Group’s application to sustain an opposition—and does not even have standing to maintain an opposition.

II. SUMMARY OF PROCEEDINGS

On June 8, 2012, MUSIC Group filed an intent-to-use application for registration of the mark AURATONE for goods and services in the categories of “Apparatus for recording, transmission, and reproduction of sound; apparatus for creating, processing, retrieval, and manipulation of sound, namely, speakers and loudspeakers; headphones.” (Application No. 85/647325.) On June 11, 2014, Auratone LLC filed a notice of opposition, alleging priority and likelihood of confusion. (Opposition No. 91216808.) Auratone also filed a trademark application for the mark AURATONE on June 11 (Application No. 86/306852), but on September 20, 2014 the application was suspended because of MUSIC Group’s earlier-filed application.

Discovery is ongoing in this opposition, and the Board has extended the close of discovery until December 13, 2015. (D.I. 15.)

III. STATEMENT OF UNDISPUTED FACTS

A. Abandonment of the AURATONE Mark

John (Jack) Wilson, doing business as Auratone Products, was the owner of trademark registration number 757,789 for the mark AURATONE for goods and services in class 36 (speakers, etc.). (Declaration of Eric A. Lindberg (hereinafter “Lindberg Decl.”), Exhibit A, Exhibits 2 and 4 to the Deposition of Marlaine Hysell.) Jack Wilson died on June 26, 2005. (Lindberg Decl., Exhibit B, Deposition of Marlaine Hysell (hereinafter “MAH”) 28:1–7; Lindberg Decl., Exhibit C, Opposer Auratone LLC’s Response to Interrogatory 7.) Soon after his death, Auratone Products stopped using the AURATONE mark in commerce and the corporation ceased activity. (MAH 38:5–39:8, 40:24–41:19.)

After Jack Wilson died, his daughters Marlaine Hysell and Michelle Jacobsen moved the remaining inventory and assets from California to Georgia. Ms. Hysell shipped speakers to fulfill an existing order and sold a few items from existing inventory on eBay to cover the expenses associated with the funeral and moving. (MAH 38:18–39:8.) Ms. Hysell shipped 31 total parts, speakers, tweeters, and crossovers in 2006 through sales using eBay. (Lindberg Decl., Exhibit C, Opposer Auratone LLC’s Response to Interrogatories 42–43; MAH 55:8–17.) Ms. Hysell also took pictures of the leftover inventory and posted it on the Hysellstuff.com domain in 2005 or 2006. (MAH 56:11–57:24; Lindberg Decl., Exhibit D.) But there are no records of any sales made from the Hysellstuff.com website, and the inventory displayed on the website has remained exactly the same since 2007. (MAH 58:9–20.)

The use in commerce on the AURATONE mark “lapsed” from 2007 to 2012, a period when there were no sales, no promotion, no manufacturing, no marketing plans, and no trademark registration activity. (See MAH 71:1–18 (characterizing the “lapse” in

sales and activity between 2006 sales and when Auratone LLC began its activity).) During this period, neither Ms. Hysell nor Ms. Jacobsen nor anyone else associated with Jack Wilson's estate attempted to re-register the AURATONE mark, register the mark in another country, or retain an attorney to help preserve the mark. (MAH 34:24–35:23, 40:12–16, 55:4–7.) No one manufactured any speakers or related products during the **seven years** between 2005 and 2012. (Lindberg Decl., Exhibit C, Opposer Auratone LLC's Response to Interrogatory 41; MAH 77:15–18.) No one sold or shipped any products to customers during the **six years** between 2007 and 2013. (Lindberg Decl., Exhibit C, Opposer Auratone LLC's Response to Interrogatories 42–43.)

Not only were there no sales, there were no products offered for sale or promoted to the public during this lapse. Customers could not directly purchase inventory displayed on the Hysellstuff website, and the inventory was listed without any prices or commercial terms. (MAH 56:11–57:24; Lindberg Decl., Exhibit D.) Ms. Hysell admitted at her deposition that individuals could not purchase products from the website, but rather could only attempt to contact her through an email address on the page. (MAH 57:16–24.) Ms. Hysell testified that the only thing she did to promote the website was to informally post the link on a few discussion boards, and admitted doing no promotion for 6 years between 2008 and 2013. (MAH 76:14–22.) Ms. Hysell also registered the domain name auratoneproaudio.com in 2006 but did nothing further with the domain other than renew it regularly. (Lindberg Decl., Exhibit C, Opposer Auratone LLC's Response to Interrogatory 7.)

Neither Ms. Hysell nor her sister Ms. Jacobsen, nor any other individual associated with Jack Wilson's estate, have any documents that corroborate that anyone intended to resume trademark use of the AURATONE mark. At some point between 2005 and 2012, Ms. Hysell and Ms. Jacobsen had discussions and decided that Jacobsen's son, Alex Jacobsen, could take possession of the inventory and start a

business.¹ But there are no written development plans or business plans describing Alex Jacobsen's intended use. Ms. Hysell and Ms. Jacobsen admitted that nobody attended any trade shows, there were no written business plans, there were no written marketing plans, no written plans concerning the auratoneproaudio.com web domain, no yellow pages advertisements, no business formation or incorporation, and nothing else in writing regarding intended use during that time period. (MAH 75:22–76:7; Lindberg Decl., Exhibit F, Deposition of Michelle Jacobsen (hereinafter "MJ"), 38:6–39:4.) Even Alex Jacobsen admitted at his deposition that prior to graduating college in 2012 there were no business plans or emails concerning his plans to begin trademark use. (Lindberg Decl., Exhibit E, Deposition of Alex Jacobsen (hereinafter "AJ"), 64:6–67:20.)

B. MUSIC Group's Trademark Application

On or about 2007, Brian Krawcykowski and Quinton Nixon registered the mark AURATONE and claimed trademark use in commerce of the mark. (Registration No. 3,283,824.) Applicant MUSIC Group later filed a petition to cancel Registration No. 3,283,824,² and on June 8, 2012 MUSIC Group filed its own application for the mark AURATONE (Application No. 85/647,325.) In 2014, the Board cancelled Krawcykowski and Nixon's Registration No. 3,283,824 under Section 8 of the Trademark Act.

C. Auratone LLC's Opposition

According to the Opposer, in 2012 Alex Jacobsen returned from college studies in South Africa and "began plans" to use the AURATONE mark and sell the older inventory along with newly-created products. (Lindberg Decl., Exhibit C, Opposer

¹ Ms. Hysell testified that she and Ms. Jacobsen decided Alex Jacobsen "could just take over" in 2010 or 2011. (MAH 37:3–17.) Alex Jacobsen graduated from college in 2012. (AJ 8:15–16.)

² Auratone LLC filed a motion to intervene in the cancellation proceeding on September 23, 2013.

Auratone LLC's Response to Interrogatories 7, 21.) No records corroborating such plans exist. According to his testimony, Alex Jacobsen started assembling enclosures in 2012 (AJ 37:18–38:2), and started assembling products in 2013. (AJ 33:23–25.)

In the spring of 2013 Alex Jacobsen formed Auratone LLC, and he is owner and sole employee. (AJ 17:4–24.) Auratone LLC made its first sale in 2013, as well. (AJ 34:9–14.) Auratone LLC also printed promotional t-shirts to distribute. (MAH 74:7–24; AJ 24:10–14.) In 2014, Auratone LLC created a new website. (AJ 28:10–16.)

The Opposer states that Jack Wilson's "heirs/beneficiaries have assigned their rights in the Auratone property and brand to" Alex Jacobsen. (Lindberg Decl., Exhibit C, Opposer Auratone LLC's Response to Interrogatory 3.) Ms. Hysell and Ms. Jacobsen transferred the inventory to Alex Jacobsen in 2012. (AJ 31:17–25.) But Ms. Hysell, Ms. Jacobsen, and Alex Jacobsen all admit that there are no written agreements, assignments, or instruments, and that the purported assignment was verbal. (MAH 65:1–7; AJ 29:7–19; MJ 52:19–24.) Further, there is no written or verbal transfer of rights pertaining to Paul Wilson, Jack Wilson's son. (MJ 54:9–13.)

Auratone filed a trademark application for AURATONE (Application No. 86/306,852) on June 11, 2014, claiming priority to Jack Wilson's use in 1959, but the Board suspended the application pending the present opposition.

IV. LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955, 961 (T.T.A.B. 1986). In inter partes trademark proceedings, summary judgment is encouraged because the issues are limited

to registrability and are therefore “particularly suitable” for disposition by summary judgment. *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 739 F.2d 624, 627 n.2 (Fed. Cir. 1984); *Phoenix Closures Inc. v. Yen Shaing Corp.*, 9 U.S.P.Q.2d 1891, 1892 (T.T.A.B. 1988). The purpose of summary judgment is judicial economy—to save the time and expense of trial where no genuine issue of material fact remains, and where no evidence beyond that which is already available in support of the summary judgment motion could reasonably be expected to change the result. *Pure Gold*, 739 F.2d at 627 n.2; *United Rum Merchs. Ltd. v. Distiller’s Corp.*, 9 U.S.P.Q.2d 1481, 1482 (T.T.A.B. 1988). No genuine issue for trial exists where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A dispute is genuine only if, on the entirety of the record, a reasonable trier of fact could resolve a factual matter in favor of the non-moving party. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)).

B. Standing to Oppose and Priority

In an opposition based on 15 U.S.C. § 1052(d), the opposer has the burden of proving that it has proprietary rights in the term it relies upon, consisting of prior registration, prior trademark use, etc. *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 1320 (C.C.P.A. 1981). This burden requires an opposer to prove that it has some prior trademark right, such as prior use of a mark previously used and not abandoned. *Life Zone Inc., v. Middleman Grp., Inc.*, 87 U.S.P.Q.2d 1953, 1959 (T.T.A.B. 2008) (precedential).

In order to transfer a proprietary trademark interest, such as through assignment, the transferred marks must be clearly identified with specificity and in writing. *See Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 74 (2d Cir. 2013),

cert. denied, 134 S. Ct. 1291 (2014) (citing 15 U.S.C. § 1060(a) and 37 C.F.R. § 3.31 and affirming district court’s finding that the party had no standing as an assignee).

For purposes of priority, an application to register a mark is considered constructive use, and an opposer has the burden of proving use or application filing prior to the date the applicant filed the registration. 15 U.S.C. § 1057(c); *Pollution Denim & Co. v. Pollution Clothing Co.*, 547 F. Supp. 2d 1132, 1140 n.35 (C.D. Cal. 2007); *Zirco Corp. v. Am. Telephone & Telegraph Co.*, 21 U.S.P.Q.2d 1542 (T.T.A.B. 1991).

V. ARGUMENT

MUSIC Group is entitled to summary judgment. Auratone LLC’s opposition is premised entirely on prior use of the AURATONE mark. But the undisputed facts show that the AURATONE mark was abandoned due to nonuse and Auratone LLC cannot rely upon the earlier use to oppose MUSIC Group’s application. Further, the Opposer’s proprietary rights are based on a verbal assignment that occurred after the mark had already been abandoned. Thus, Auratone LLC has no priority over MUSIC Group’s application and does not even have standing to maintain the opposition.

A. The AURATONE Mark Has Been Abandoned

Under the Lanham Act, a mark is abandoned if its use has been discontinued with no intent to resume such use. 15 U.S.C. § 1127. “Use” of a mark means bona fide use in the ordinary course of trade, and nonuse for 3 consecutive years is prima facie evidence of abandonment. *Id.*; see *La Societe Anonyme des Parfums le Galion v. Jean Patou, Inc.*, 495 F.2d 1265, 1271–72 (2d Cir. 1974) (holding that in order prove trademark use against allegations of abandonment the party must demonstrate use that is deliberate and continuous commercial use—not sporadic, casual, or transitory). If a party provides such evidence of nonuse, the burden shifts to the other party to submit evidence that raises a

material issue of fact regarding intent to resume use. *Imperial Tobacco Ltd. ex rel. Imperial Grp. PLC v. Philip Morris, Inc.*, 899 F.2d 1575, 1581–82 (Fed. Cir. 1990) (affirming summary judgment because appellant’s activities were insufficient to raise a genuine issue of fact).

In order to rebut a showing of nonuse and demonstrate a genuine issue of fact regarding intent to resume use, a party must submit objective evidence; A declaration of subjective intent to resume is insufficient to create a genuine issue of fact. *Imperial Tobacco*, 899 F.2d at 1581. Generally, a party must come forward with documentary evidence or specific activities corroborating intent to resume use, such as written marketing plans. *Spirits Int’l, B.V. v. S.S. Taris Zeytin*, 99 U.S.P.Q.2d 1545 (T.T.A.B. 2011) (precedential) (concluding that applicant had abandoned the mark because the applicant was unable to produce any documents regarding intended use, promotional marketing materials, or marketing plans); *Honda Motor Co., v. Friedrich Winkelmann*, 90 U.S.P.Q.2d 1660 (T.T.A.B. 2009) (Precedential) (granting summary judgment because no documents existed supporting intent to resume use). Evidence of a long-history of past use before the nonuse period is insufficient. *Hornby v. TJX Companies, Inc.*, 87 U.S.P.Q.2d 1411 (T.T.A.B. 2008) (Precedential) (holding that the evidence established the statutory period of non-use, and evidence of substantial use occurring before the statutory non-use period was not sufficient evidence of intent to resume use) (citing *Silverman v. CBS Inc.*, 870 F.2d 40, 9 U.S.P.Q.2d 1778, 1783 (2d Cir. 1989)).

1. The undisputed facts show that the AURATONE mark was not used in commerce for at least five years

The record demonstrates that the AURATONE mark was not used in the ordinary course of trade for more than three consecutive years. In fact, there is no documentary proof of any trademark use or intent to resume trademark use, at minimum, in 2008,

2009, 2010, or 2011 (and significant portions of 2007 and 2012). As such, MUSIC Group has established a prima facie case of abandonment.

Ms. Hysell and Ms. Jacobsen sold a few products in 2006, but manufactured or sold no products under the AURATONE brand thereafter. For at least the entirety of 2007, 2008, 2009, 2010, and 2011 there were no sales, promotions, manufacturing, or trademark registration activity. This five year “lapse” in trademark use more than satisfies the statutory period for abandonment. 15 U.S.C. § 1127 (requiring three years of nonuse for abandonment).

The website listing the old inventory is also insufficient “use in the ordinary course of trade.” Ms. Hysell did no promotion of the website after initial posting, and the inventory was displayed without any price or mechanism to permit a customer to directly purchase any products. *See Jean Patou*, 495 F.2d at 1271–72 (requiring use that is deliberate and continuous and not sporadic, casual, or transitory to prove trademark use).

2. The record is devoid of any evidence of intent to resume use during the period of non-use

Once a prima facie case of abandonment is established, the burden shifts to the opposer to demonstrate a bona fide intent to resume use of the mark before three years of nonuse has run. *Exxon Corp. v. Humble Exploration Co.*, 695 F.2d 96, 99 (5th Cir. 1983) (focusing on a mark owner’s objective intent to resume use in order to prevent trademark hoarding); *see Imperial Tobacco*, 899 F.2d at 1581 (“[T]he Lanham Act was not intended to provide a warehouse for unused marks.”).

The Opposer does not have an iota of objective evidence of intent to resume use. No one associated with Opposer has any documents or any evidence that corroborates intent to resume use of the AURATONE mark. Ms. Hysell, Ms. Jacobsen, and Alex Jacobsen all admitted during their depositions that there are no written development or business plans. (MAH 75:22–76:7; MJ 38:6–39:4; AJ 64:6–67:20.) Nor did anyone

engage in activities, such as attending trade shows or developing web pages, during the 2007 to 2012 time period. (MAH 75:22–76:7; MJ 38:6–39:4.) Moreover, there were no steps taken during the period of abandonment to prevent others from using the mark, including Nixon and Krawczykowski’s registration and use of the AURATONE mark for related goods. (MAH 78:22–79:25.)

Without any objective, written, evidence, Opposer has only self-serving declarations and vague testimony. Such “evidence” is not sufficient to avoid summary judgment of abandonment. *Imperial Tobacco*, 899 F.2d at 1581 (likening subjective evidence and conclusory statements to denials in a pleading that are “patently insufficient to preclude summary judgment”). For example, the Board has previously rejected a claim of intent to use a mark when a party “supplied no documentary evidence” regarding its intent to use and “affirmatively stated that no such documents exist.” *Spirits Int’l*, 99 U.S.P.Q.2d 1545, at *4.

3. The AURATONE mark has been abandoned as a matter of law

Because the undisputed facts show nonuse for at least three years and there is no evidence that creates a factual dispute regarding intent to resume use, summary judgment is appropriate. *Imperial Tobacco*, 899 F.2d at 1581 (affirming Board’s grant of summary judgment of abandonment).

The long history of trademark use of the AURATONE mark before abandonment is not relevant. *Hornby*, 87 U.S.P.Q.2d 1411, at *9–10 (disregarding evidence of a long history of past use before abandonment). Even though the AURATONE mark was first used in 1959, the Lanham Act “does not allow the preservation of a mark solely to prevent its use by others.” *Exxon Corp.*, 695 F.2d at 101. In any event, Courts only consider a mark’s “residual goodwill” as an additional factor when there is *already* objective evidence of trademark use or intent to resume use. For example, in *Ferrari*

S.p.A. Esercizio Fabbriche Automobili e Corse v. McBurnie (“Ferrari”), the Court only considered the brand’s “residual goodwill”—which was much more substantial concerning the famous SPYDER mark as compared to AURATONE—because Ferrari submitted some evidence of continuous use. *Ferrari*, 11 U.S.P.Q.2d 1843, at *7 (S.D. Cal. 1989). Ferrari’s strong goodwill was a factor in that case because although Ferrari had stopped manufacturing SPYDER automobiles, it continuously “manufactured and sold 5 or 6 entire front end body parts (everything but the hood, including bumpers), as well as 5 or 6 entire rear end body parts” every year. *Id.*

Here, the undisputed evidence shows not only that Ms. Hysell and Ms. Jacobsen did not manufacture or sell any speakers, they also did not sell or distribute any parts or items that used the AURATONE mark. No matter how strong the AURATONE mark might have been when Ms. Hysell and Ms. Jacobsen stopped use, they abandoned the mark as a matter of law because they did not make any commercial use for more than three years and there is no evidence that would permit a reasonable jury to find intent to resume use.

B. Because the AURATONE Mark Was Abandoned the Opposition Must Be Dismissed

Based on the above, all rights in the AURATONE mark have previously been abandoned and, consequently, the opposition must be dismissed. First, the record shows that there is no material dispute of fact regarding priority, and thus no valid likelihood of confusion claim. Second, the Opposer lacks standing because it has no rights in the AURATONE mark on which to base the opposition.

1. The Opposer Cannot Prove Priority Because of Abandonment

Auratone LLC bases its opposition on priority and likelihood of confusion. But since the AURATONE mark had been abandoned by the time Auratone LLC filed its opposition, Auratone is not entitled to rely upon the earlier use to claim priority. When

the mark was abandoned, any assignment or transfer of rights in the mark was void. *Osmosis Tech., Inc., v. GE Osmotics, Inc.*, CANCELLATION 9202427, 2004 WL 725457, at *10 (T.T.A.B. Mar. 30, 2004) (non-precedential). Auratone LLC is not entitled to rely on any of the trademark use from before 2006 in support of its opposition.³

Further, the undisputed facts show that the Opposer did not make any use in commerce of the AURATONE mark before MUSIC Group submitted its application. Under 15 U.S.C. § 1057(c) MUSIC Group is entitled to a priority date of June 8, 2012. But Auratone LLC was not formed until 2013, and the undisputed facts show that Auratone LLC made no use in commerce of the mark until at least 2013, when it sold products and printed t-shirts.⁴

MUSIC Group is therefore entitled to summary judgment dismissing Auratone LLC's opposition. Auratone LLC has no claim of priority, and thus cannot prove likelihood of confusion.

2. The Opposer Cannot Prove Proprietary Rights

The Board should also dismiss the opposition because Auratone LLC cannot prove that it has any proprietary rights in the old AURATONE mark. First, all trademark rights in the AURATONE mark had been abandoned by Ms. Hysell and Ms. Jacobsen before rights could have been transferred to the Opposer. *Auburn Farms Inc. v. McKee*

³ Auratone LLC is also not permitted to rely upon any of the prior trademark use because the trademark assignment was void in the absence of a written record. *See infra* Section V.B.2.

⁴ The record may show that the Opposer assembled some speaker enclosures in 2012. (AJ 37:18–38:2.) But product assembly, without any promotion, sales, or use of the mark in public, is not trademark use. *Blue Bell, Inc. v. Farah Mfg. Co.*, 508 F.2d 1260, 1266 (5th Cir. 1975) (requiring open, public use of a mark to give rise to trademark rights). Auratone LLC cannot rely upon this activity to oppose Music Group's application. In any event, there is no evidence in the record that permits an inference that any such products were manufactured before June 8.

Foods Corp., 51 U.S.P.Q.2d 1439, 1999 WL 588247, at *6 (T.T.A.B. 1999) (precedential) (holding that abandonment before assignment results in an assignment in gross). Second, the record is clear that there are no written agreements, assignments, or instruments assigning the mark to Auratone LLC—the purported assignment was verbal. (MAH 65:1–4; AJ 29:7–19; MJ 52:19–24.)⁵ Assignments, however, must be in writing in order to be valid. 15 U.S.C. § 1060(a)(3) (“Assignments shall be by instruments in writing duly executed”); *SPI Spirits Ltd.*, 726 F.3d at 74. Because there is no written assignment, the Opposer possesses no trademark rights based on the old AURATONE mark.

In the absence of proprietary rights in the old AURATONE mark, the Opposer does not have standing to oppose MUSIC Group’s application, and MUSIC Group is entitled to summary judgment dismissal of the opposition.

VI. CONCLUSION

For the reasons set forth above, MUSIC Group respectfully requests summary judgment that the prior AURATONE mark was abandoned and that the Board dismiss Auratone LLC’s opposition.

⁵ There was also never any assignment of rights from Paul Wilson. (MJ 54:9–13.)

DATED this 18th day of September, 2015.

Seed IP Law Group PLLC

/Eric A. Lindberg/

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Attorneys for Applicant
MUSIC Group IP Ltd.

4225654_1.docx

CERTIFICATE OF SERVICE

I hereby certify that the above **APPLICANT MUSIC GROUP IP LTD.'S MOTION FOR SUMMARY JUDGMENT** was served on Opposer's counsel on September 18, 2015, addressed as follows:

Amy J. Everhart
amy@everhartlawfirm.com

/Anne Calico/

Anne Calico

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Auratone LLC)	
	)	Opposition No. 91216808
)	
Opposer,	)	Serial No. 85/647325
)	
v.)	
)	
MUSIC Group IP Ltd.,)	
)	
Applicant.	)	Attorney Docket No. 900195.837
)	

**DECLARATION OF ERIC A. LINDBERG IN SUPPORT OF MUSIC GROUP IP
LTD'S MOTION FOR SUMMARY JUDGMENT**

I, Eric A. Lindberg, hereby declare and state as follows:

1. I am a citizen of the United States and of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled proceeding.
2. I am an attorney with the law firm of Seed IP Law Group PLLC, counsel for Petitioner MUSIC Group IP Ltd. ("MUSIC Group" or "Applicant") in the above-captioned proceeding. I make the following statements from personal knowledge, unless otherwise noted, and am competent to testify regarding the matters herein.
3. Attached hereto as Exhibit A is a true and correct copy of Exhibits 2 and 4 to the deposition of Marlaine Hysell taken on July 21, 2015.

4. Attached hereto as Exhibit B are true and correct copies of cited excerpts to the deposition of Marlaine Hysell taken on July 21, 2015.

5. Attached here to as Exhibit C are true and correct copies of Opposer Auratone LLC's Answers to Interrogatories 3, 7, 21, and 41–43.

6. Attached hereto as Exhibit D is a true and correct printout of speaker inventory at Hysellstuff.com.

7. Attached hereto as Exhibit E is a true and correct copy of cited excerpts to the deposition of Alex Jacobsen taken on July 21, 2015.

8. Attached hereto as Exhibit F is a true and correct copy of cited excerpts to the deposition of Michelle Jacobsen taken on July 22, 2015.

I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

Dated and executed this 18th day of September, 2015, at Seattle, Washington.

/Eric A. Lindberg/
Eric A. Lindberg

CERTIFICATE OF SERVICE

I hereby certify that the above **DECLARATION OF ERIC A. LINDBERG IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served on Opposer's counsel on September 18, 2015, addressed as follows:

Amy J. Everhart
amy@everhartlawfirm.com

/Anne Calico/

Anne Calico

EXHIBIT

A



Nº 757789

THE UNITED STATES OF AMERICA

This is to certify that from the records of the Patent Office it appears that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed this first day of October, 1963.

David L. Rose
COMMISSIONER OF PATENTS



AURA000480

United States Patent Office

757,789
Registered Oct. 1, 1963

PRINCIPAL REGISTER Trademark

Ser. No. 163,687, filed Feb. 28, 1963

AURATONE

John A. Wilson, doing business as Jack Wilson Company
1540 Ventura Blvd., P.O. Box 1005
Thousand Oaks, Calif.

For: HIGH FIDELITY FURNITURE AND PARTS THEREOF—NAMESLY, LOUDSPEAKER ENCLOSURES, LOUDSPEAKER WALL BAFFLES, EXTENSION LOUDSPEAKER ENCLOSURES, LOUDSPEAKER ENCLOSURE GRILLES AND GRILLE BOARDS, LOUDSPEAKER ENCLOSURE SPEAKER

PORT COVERS, LOUDSPEAKER ENCLOSURE TUNING DUCTS, LOUDSPEAKER ENCLOSURE MOUNTING BRACKET KITS, LOUDSPEAKER ADAPTER BOARDS, HIGH FIDELITY COMPONENT EQUIPMENT CABINETS, AND RECORD CHANGER BASES; ALSO, HIGH FIDELITY LOUDSPEAKER SYSTEMS, EXTENSION LOUDSPEAKERS, AND LOUDSPEAKERS—in CLASS 36.

First use Nov. 19, 1958; in commerce Dec. 22, 1959.

AURA000481

(Instructions on reverse side)

APPLICATION FOR RENEWAL OF REGISTRATION OF A MARK, WITH DECLARATION	MARK (identify the mark)
	AURATONE
	REGISTRATION NO. 757,789
TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:	CLASS NO.(S) 36
(Check one box and fill in appropriate information ¹)	
<input checked="" type="checkbox"/> NAME OF INDIVIDUAL AS RENEWAL APPLICANT, AND BUSINESS TRADE NAME, IF ANY	
John A. Wilson d.b.a. Auratone Products	
BUSINESS ADDRESS	
P. O. Box 698, Coronado, Ca. 92118	
RESIDENCE ADDRESS	
3 Blue Anchor Cay Rd., Coronado, Ca. 92118	
CITIZENSHIP	
United States	
<input type="checkbox"/> NAME OF PARTNERSHIP AS RENEWAL APPLICANT	
NAMES OF PARTNERS	
BUSINESS ADDRESS OF PARTNERSHIP	
CITIZENSHIP OF PARTNERS	
<input type="checkbox"/> NAME OF CORPORATION ² AS RENEWAL APPLICANT	
STATE OR COUNTRY OF INCORPORATION	
BUSINESS ADDRESS OF CORPORATION	

The above identified applicant for renewal requests that the above identified registration, granted to
John A. Wilson d.b.a. Auratone Products on October 1, 1963,
(name of original registrant) (date of issuance)
which applicant for renewal now owns, as shown by records in the Patent and Trademark Office, be renewed
in accordance with the provisions of Section 9 of the Act of July 5, 1946.

The mark shown in said registration is still in use in Inter-State commerce³
(type of commerce)
on or in connection with each of the following: all the goods
(list the goods and/or services or)

Insert the words "all the goods" and/or "all the services" as may be appropriate.)

which are recited in the registration, the attached specimen showing the mark as currently used.⁴

John A. Wilson
(name of person whose signature is to be placed below⁵)

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment,
or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may
jeopardize the validity of this application, declares that all statements made in this application of his/her
knowledge are true and all statements made on information and belief are believed to be true.

John A. Wilson
(signature)

5-26-83
(date)



EXHIBIT

B

MARLAINE ANNETTE HYSELL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Auratone, LLC,)
) Opposition No.
Opposer,) 91216808
)
v.) Application
) Serial No.
MUSIC Group IP Ltd.,) 85647325
)
Applicant.) Published in
) the Official
) Gazette on
) May 13, 2014
)
)
)
)
)
)
)

DEPOSITION OF:

MARLAINE ANNETTE HYSELL

Taken on behalf of the Applicant

July 21, 2015

Atkinson-Baker, Inc.
ABI Job NO. A907DB6
800-288-3376
Jennifer G. Haynie, LCR, No. 403

MARLAINE ANNETTE HYSELL

1 A. When my father's death was?

2 Q. Yes.

3 A. Yes. It -- he was found on June 26th,
4 1995, I believe.

5 Q. June 26th, 1995?

6 A. Is that the year of his death? I'm
7 having a brain cramp. No. 2005.

8 Q. Okay. And you said he was found?

9 A. Yes.

10 Q. Where was he found?

11 A. In a bank in Coronado. He went to the
12 bank on the 25th. The last time he was seen on
13 security footage was -- it was a -- they're
14 defunct now, the bank company. But he went into
15 the branch and the last time he was seen was on
16 security footage going into the restroom and
17 then he was found by the cleaning staff the next
18 morning --

19 Q. I see.

20 A. -- dead.

21 Q. What was the cause of death, a heart
22 attack?

23 A. Uh-huh.

24 Q. [REDACTED]

25 A. [REDACTED]

1 school. My parents arranged for us to take the
2 school bus from their factory for many years
3 after school so we wouldn't be alone at home.
4 Oftentimes, we slept on stacks of cardboard
5 because my parents needed to work late.

6 I mean, I guess like a farmer would say
7 farming is in my blood, Auratone's in my blood.
8 And I -- I just always felt like there wouldn't
9 be anybody heartless enough to try to take that
10 away from us.

11 Q. At any point in time, did you attempt to
12 contact the people you found were trying to
13 register the mark?

14 A. As I said before, no.

15 Q. And did you make any attempt to reinstate
16 the Auratone mark yourself?

17 A. Well, I --

18 MS. EVERHART: Objection to the form
19 of that question.

20 THE WITNESS: I didn't know if you
21 wanted to restate it.

22 BY MR. TARLETON:

23 Q. Well, let's nail it down to a period of
24 time. From the time you found that piece of
25 paper until the time you saw another company

1 trying to register the mark, did you make any
2 attempt to re-register the Auratone mark?

3 A. No. As far as making phone calls to
4 government or concessions or that sort of thing,
5 no.

6 Q. Did you hire an attorney to help you with
7 the Auratone trademark?

8 A. I did not hire an attorney. I spoke with
9 an attorney.

10 Q. Do you know who that was?

11 A. I don't remember her name.

12 Q. Was she in California?

13 A. No. She was in Georgia.

14 Q. At what --

15 A. Atlanta area.

16 Q. At what period of time was this?

17 A. I would only -- guessing really, within
18 about a year of my dad's death.

19 Q. And did the attorney take any action for
20 you?

21 A. No.

22 Q. Do you know why?

23 A. I didn't ask her to.

24 Q. Why not?

25 A. At that time, there was discussion

1 between myself and my husband and my sister,
2 Michelle, and her husband and -- how are we
3 going to manage starting Auratone again and who
4 would do it, and who was going to make the
5 commitment and so forth. My husband arranged
6 for, as a favor to him, an attorney -- trademark
7 attorney to call me and have just sort of an
8 introduction conversation. I had questions such
9 as --

10 MS. EVERHART: And let me instruct
11 you not to discuss the substance of the
12 conversations with the attorney.

13 THE WITNESS: That's right. I
14 probably shouldn't do that.

15 BY MR. TARLETON:

16 Q. And so based on your discussion with the
17 attorney, what did you decide to do about the
18 Auratone trademark?

19 MS. EVERHART: And I'll object to
20 that question.

21 THE WITNESS: I wouldn't say an
22 active decision was made because at that point,
23 I and we (phonetic) continued to determine what
24 we were going to do as far as trying to keep
25 things -- keep Auratone going or keep the

1 Auratone name for our family.

2 BY MR. TARLETON:

3 Q. And what decision was eventually made?

4 A. That Alex would just take it over.

5 Q. And when did you make that decision?

6 A. Is it okay if I ask Alex what year he
7 graduated from college.

8 Q. No.

9 MS. EVERHART: No.

10 THE WITNESS: No? Okay. So I think
11 whether or not I formally or informally told
12 Alex or my sister that I was okay with that
13 decision, I was satisfied with the decision that
14 Alex was capable and dedicated enough to take
15 over running the business and pursuing the
16 trademark and all that. Probably 2010, maybe
17 '11.

18 BY MR. TARLETON:

19 Q. And how did you inform Alex of this?

20 A. That was probably through Michelle, just
21 in having a conversation that, you know, I'm
22 good with it now. Obviously, we all emotionally
23 had a very strong investment in the business and
24 coming to the point of, okay, I feel like it's
25 in good hands. I'm satisfied that it will be in

1 good hands. I can step back. It was a process
2 for me to come to that decision.

3 Q. And this was verbally?

4 A. Yes.

5 Q. So between the time your father passed
6 away in 2005 --

7 A. Uh-huh.

8 Q. -- and the time you came to that decision
9 in 2010 time period, what happened to Auratone
10 Corporation?

11 A. I had some communication -- as far as the
12 corporation functioning, I wouldn't say it
13 wasn't exactly functioning. I did -- on the
14 behalf of the corporation, did have some
15 communication with customers that I was familiar
16 with over the years, some that I wasn't familiar
17 with.

18 I shipped some speakers to a former
19 customer because I knew when my dad passed away
20 that my dad had owed him some finished systems,
21 so I had -- a system is the complete enclosure
22 ready to go in the box and be shipped. A
23 speaker is a speaker, a raw speaker. You know,
24 that's my terminology.

25 So I -- to make up for that, I shipped

1 him -- I don't remember the number, but quite a
2 few raw speakers because I wanted to make that
3 right. I didn't want the name or my parents'
4 names being disparaged because that debt wasn't
5 satisfied, things like that. I sold a few
6 things on E-Bay and that was really to cover
7 some of the expenses of flying out and the
8 funeral and all of that.

9 Q. At the time your father passed away,
10 where were you living?

11 A. In -- then it's called Duluth, Georgia.
12 Now it's called Peachtree Corners.

13 Q. In Georgia. And is that where you
14 currently live?

15 A. Yes.

16 Q. At the time your father passed away, as I
17 understand it, you flew out to California --

18 A. Yes.

19 Q. -- to handle the affairs.

20 A. Yes. And I paid for my sister's
21 expenses, too, the same.

22 Q. And that would be Michelle?

23 A. Yes.

24 Q. And that's when the two of you found this
25 piece of paper concerning the Auratone

1 trademark?

2 A. Yes.

3 Q. And then you brought that piece of paper
4 back to Georgia?

5 A. As far as I recall, yes.

6 Q. And you consulted with a trademark
7 attorney?

8 A. Yes.

9 Q. But you've made no attempts to
10 re-register the mark at that time?

11 A. Yes, that's correct.

12 Q. And when you made the decision to let go
13 of the business to Alex in around 2010, at that
14 time, you had taken no steps to re-register the
15 mark?

16 A. Correct.

17 Q. Auratone Corporation was a California
18 corporation?

19 A. Correct.

20 Q. When you brought the papers back from
21 California to Georgia, did you incorporate
22 Auratone Corporation in Georgia?

23 A. No.

24 Q. What happened to the California
25 corporation?

1 A. I don't know. It -- I don't have a
2 specific recollection, but I do think that there
3 was filing that needed to be kept up with on
4 that, too, and that wasn't kept up with. But
5 that's just -- I have a feeling that that was
6 what was happening and that was probably
7 nonexistent, but I don't know for a fact.

8 Q. You don't know because you don't remember
9 or because someone else may have been
10 responsible for it?

11 A. I don't know because I don't remember.

12 Q. Okay. Who was primarily responsible for
13 the business after your father's death? Was it
14 you?

15 A. Uh-huh.

16 Q. And as far as you can remember, the
17 corporation in California eventually stopped
18 being active?

19 A. Yes.

20 Q. And you did not incorporate in Georgia --

21 A. Correct.

22 Q. -- or anywhere else?

23 A. Correct.

24 Q. And this is because you were uncertain as
25 to what to do with the business?

1 Q. Do you know if any steps were taken to
2 renew that registration?

3 A. I don't know.

4 Q. Have you taken any steps to register the
5 Auratone trademark in any countries outside of
6 the U.S.?

7 A. No.

8 Q. After you brought the equipment and
9 inventory and speakers back to your home in
10 Georgia, what did you do with them?

11 A. As I said before, sorted them out. I had
12 pretty accurate inventory of what was there.
13 Sold a few things on E-Bay.

14 Q. When did you sell those on E-Bay? What
15 time period?

16 A. Probably in 2006, something like that. I
17 think around there.

18 Q. And did you advertise anywhere else
19 besides on E-Bay that you had speakers for sale?

20 A. My son helped me set up a website, a web
21 page that I could refer people to where I listed
22 speakers, samples, so forth, that if anyone was
23 interested in those, could -- could make me an
24 offer sort of a thing.

25 Q. Do you recall the address of that web

1 page?

2 A. Pro Audio.

3 Q. Was it Auratone Pro Audio?

4 A. I'm sorry. Auratone Pro Audio.

5 Q. Dot com?

6 A. Yes. I called it Pro Audio because in my
7 home, it was -- the Auratone part was assumed.

8 (Exhibit Number 11 was marked.)

9 BY MR. TARLETON:

10 Q. The reporter has handed you what has been
11 marked as Exhibit 11.

12 A. Uh-huh.

13 Q. Do you recognize this?

14 A. Yes.

15 Q. What is it?

16 A. It is a printout of the inventory
17 internet page that my son and I created.

18 Q. And which son was this?

19 A. Brian. Oh, then there's also a page -- a
20 gallery of the different configurations of the
21 full official names, like Auratone 5C Super
22 Sound Cube. The various configurations that it
23 took over the years. I call it my museum page.
24 As well as some other systems that may or may
25 not have been produced. A couple of them were

1 not produced. They were just kind of testing
2 the water as far as making different systems.

3 Q. And when did this web page become active?

4 A. I think it was probably 2006, 2000 --
5 yeah, 2005, 2006.

6 Q. Is it still active today?

7 A. Yes.

8 Q. And do you know if it can be located
9 using a Google search?

10 A. It could. I don't know if it can't
11 today. I haven't tried in the last few years,
12 probably three years, so I don't know.

13 Q. Who took the pictures that are displayed
14 on the web page?

15 A. Unfortunately, I have to say I did.

16 Q. And is it possible to order product
17 directly from the web page?

18 A. Using the e-mail address I have listed
19 there, it's possible to contact -- is possible
20 and was possible to contact me directly and
21 inquire.

22 Q. They couldn't make a payment directly
23 over the web page?

24 A. No. They could through my E-Bay account.

25 Q. And has that website changed in its

1 content since you --

2 A. Very little.

3 Q. Well, what changes have been made?

4 A. I -- as I remember, I think I changed out
5 some of the pictures for better quality ones.

6 Probably added some inventory or -- or changed
7 the descriptions. Tweaks I would call them.

8 When I did that, I don't remember.

9 Q. Would there have been any changes after
10 2007?

11 A. I don't know. I don't remember.
12 Probably -- no, I won't say probably. That's
13 probably about the last -- that sounds about
14 right for the last time that I made changes.

15 Q. And when was the last time you made a
16 sale based on contacts from the website?

17 A. From this (indicating)?

18 Q. Yes.

19 A. I don't know that I ever did make a sale
20 based on this. I just don't remember that
21 detail, but I don't think -- well, I take it
22 back. I could have sold some tweeters based on
23 that, but -- that somebody asked about and I
24 directed them to look at this website.

25 (Exhibit Number 12 was marked.)

1 to last sentence, "The heirs/beneficiaries have
2 assigned their rights in the Auratone property
3 and brand to Michelle Jacobsen's son, Alex
4 Jacobsen."

5 Was that assignment of rights done in
6 writing, to your knowledge?

7 A. Not in anything I've seen.

8 Q. So you have not seen any document whether
9 there has been an assignment of trademark rights
10 to Alex Jacobsen?

11 A. Correct.

12 Q. Has there been any assignment to
13 Auratone, LLC that you are aware of in writing?

14 A. I'm not aware of that.

15 Q. Have all rights in the Auratone property
16 and brand been assigned to Alex Jacobsen?

17 A. Verbally.

18 Q. By who?

19 A. By myself. I can't speak for anybody
20 else but for myself.

21 Q. So all of your rights --

22 A. Correct.

23 Q. -- as you understand it?

24 A. As I understand it, that I have full
25 confidence that he'll be able to carry it on.

1 A. Well, there was a lapse there. I don't
2 know the last date of my selling something where
3 I was sort of like, oh, I should probably get
4 something else on there. You know, like I felt,
5 you know, a duty to try to recoup some of the
6 thousands of dollars involved with getting
7 things out to -- back to Atlanta. So I sort
8 of -- maybe I'll get a few more things on.

9 And then probably -- I would guess maybe
10 late 2007, 2008, you know. We're going to get
11 this business going again. I'm holding on to
12 these. I mean, I didn't -- I felt qualms about
13 making sure I didn't send them to -- or, you
14 know, they pick them up, but they didn't go to
15 Alex before I knew Alex was fully committed
16 about letting them out of my sight --

17 Q. Right.

18 A. -- because I knew the value of them.

19 [REDACTED]

20 [REDACTED] REDACTED

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 A. [REDACTED]

1 sales, because I don't see this first Larry --
2 or Warren Millers on 14, I didn't see him in 16.
3 Do you want me to go through --

4 Q. No. I think we can stop. We'll move on
5 to some additional questions.

6 A. Okay.

7 Q. Besides the internet sales that we've
8 discussed today in these exhibits, has there
9 been any other activity that you engaged in to
10 sell product under the Auratone brand from the
11 date you brought the product home to Georgia
12 until 2013?

13 A. Not the speakers, but Michelle and I
14 discussed together getting the T-shirts going.
15 And then I don't know what year that was, but it
16 was a few years ago that -- that I found -- you
17 know, went through things and found the artwork
18 for the T-shirts. And she took that with her to
19 Hendersonville and got the ball rolling on
20 starting to print out T-shirts.

21 Q. And have the T-shirts been printed?

22 A. Yes.

23 Q. And have they been sold?

24 A. That, I don't know. I've been told they
25 have, but that as a firsthand fact, I don't

1 know.

2 Q. And when would this have happened, what
3 time period?

4 A. Sometime before -- well, I can't pinpoint
5 what year. Maybe -- it was in conjunction with
6 discussing Alex taking over the business, but I
7 couldn't tell you which year.

8 Q. Sometime after 2010?

9 A. Possibly 2010 itself, but I don't know
10 for a fact.

11 Q. And where are those T-shirts being
12 advertised, if you know?

13 A. I don't know.

14 Q. Have you or anyone on your behalf
15 attended any trade shows since your father's
16 death until 2013 to promote --

17 A. No. I wouldn't say on my behalf because
18 the business is Alex's baby.

19 Q. But between the time of your father's
20 death and 2013 --

21 A. Correct.

22 Q. -- no trade shows?

23 Any business plans written or developed
24 for the Auratone brand?

25 A. No.

1 Q. Marketing plans?

2 A. No.

3 MS. EVERHART: Again, you're
4 referring to that time period?

5 MR. TARLETON: Yes. Between --

6 THE WITNESS: I should say nothing
7 in writing. There was a lot of discussion.

8 BY MR. TARLETON:

9 Q. Discussion with who?

10 A. With my husband, who is well versed in
11 business, and with my sister, Michelle, and some
12 with Alex and some with my brother-in-law, Paul
13 Jacobsen.

14 Q. Have you done anything to promote the web
15 page where you have these Auratone products
16 displayed?

17 A. I posted it back when I uploaded the
18 website. I did -- I believe I posted that link
19 on a few discussion boards.

20 Q. And when would this have been?

21 A. Probably -- it could have been as late as
22 2007, but I'm not sure.

23 Q. And nothing since then?

24 A. I don't think so.

25 Q. And the AuratoneProAudio.com domain, who

1 owns that?

2 A. Alex does now -- oh, no -- well, I can't
3 say I'm positive because I still own some domain
4 names. I'm pretty sure it was all transferred
5 to Alex. I'm pretty sure he owns it, but it
6 could -- but since he's not using that site that
7 I listed products on, I don't know. I just
8 don't know. I'd have to look into it.

9 Q. Does he have a different domain name he's
10 using?

11 A. Yes.

12 Q. Do you know that domain name?

13 A. I don't -- I know it has words on it, but
14 I don't know the specifics.

15 Q. Have you had any products manufactured
16 from 2006 to 2013 that were to be branded with
17 the Auratone mark?

18 A. Personally, no.

19 Q. From 2006 to 2012, would your answer be
20 the same?

21 A. I personally have not placed the orders,
22 but I did work, as I said, with my sister,
23 Michelle.

24 Q. And what --

25 A. Just for the T-shirts.

1 Q. Oh, just for the T-shirts. No other
2 products?

3 A. I can't think of anything.

4 Q. When did you first learn that the
5 trademark "Auratone" had been registered by
6 someone else for speakers?

7 A. In -- I think that was early July of
8 19 -- no, 2005.

9 Q. Again, I'm specifically talking for
10 speakers.

11 A. Well, the radio guys, that's what they --
12 I think that's what was in their description of
13 what they --

14 Q. And when you say "radio guys," can you be
15 more specific?

16 A. Well, the first -- the people that I saw
17 were two men who, from what I found out looking,
18 just Googling them briefly on the internet, was
19 that they were involved with -- at least one of
20 them was involved with radio somehow and maybe
21 DJ'ing and they're from California.

22 Q. Okay. But does the name Nixon ring a
23 bell?

24 A. It might.

25 Q. Mr. Krobakowski?

1 A. A long name rings a bell, but yeah.

2 Q. And you say you discovered that
3 registration around 2005?

4 A. In 2005, my son -- when we discovered the
5 trademark registration information -- I guess
6 it's called registration, if that's the correct
7 term -- that my dad hadn't paid. And then I had
8 my son help me with looking that up, finding out
9 where to find the information. That's when I
10 found out it was still in California still in my
11 dad's home.

12 Q. Have you ever spoken with those two men
13 who owned that registration?

14 A. No.

15 Q. Has anyone on your behalf spoken to them
16 before 2012?

17 A. Not that I know of. I don't know how
18 long Pam has been working for Alex. Amy.

19 THE WITNESS: Why did I call you
20 Pam?

21 BY MR. TARLETON:

22 Q. Any reason you didn't reach out to them?

23 A. No, I didn't think it was necessary. I
24 knew that this was a long process for anybody
25 applying for a mark.

EXHIBIT

C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Auratone LLC,)	
Opposer,	)	Opposition No. 91216808
)	
v.	)	Application Serial No. 85647325
)	
MUSIC Group IP Ltd.	)	Published in the Official Gazette on
Applicant.	)	May 13, 2014

**AURATONE LLC’S RESPONSES AND OBJECTIONS TO MUSIC GROUP IP LTD.’S
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Auratone LLC, submits these responses and objections to the First Set of Interrogatories submitted by Applicant, MUSIC Group IP Ltd. (“Applicant”).

GENERAL OBJECTIONS

1. Auratone LLC objects to Applicant’s definitions and instructions to the extent they exceed the requirements of the Federal Rules of Civil Procedure.

2. To the extent any Interrogatory may be construed as calling for documents or information subject to a claim of privilege or protection including, without limitation, the attorney-client privilege or attorney work-product protection, Auratone LLC asserts such privilege and will not produce privileged documents or provide privileged information.

3. To the extent any Interrogatories may be construed as calling for documents or information that constitute trade secrets, proprietary information or competitive business data, Auratone LLC objects to such Interrogatories on that basis and will produce such information only pursuant to the terms of the Protective Order agreed to in this proceeding.

4. The responses set forth below represent Auratone LLC’s present knowledge, based on discovery, investigation and trial preparation to date. Discovery, investigation and trial

preparation are continuing. Auratone LLC expressly reserves the right to rely on any further information adduced upon completion of discovery, investigation, and trial preparation.

5. These general objections are incorporated into each of the responses set forth below, which responses are made without waiver of any of these general objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

State the date on which Opposer, Auratone LLC, was formed.

RESPONSE: May 18, 2013.

INTERROGATORY NO. 2:

Identify all past and present members of Auratone LLC, including their titles, if any, and corresponding duties and responsibilities.

RESPONSE: Alex Jacobsen, managing member/principal. Mr. Jacobsen is the sole member of the company and is responsible for all duties in connection with the company.

INTERROGATORY NO. 3:

Describe in detail the basis for your contention that Auratone LLC is the successor in interest to the late John A. “Jack” Wilson and his company.

RESPONSE:

John A. “Jack” Wilson (“Jack Wilson”) and his wife, Harriet Elaine Wilson, were the sole shareholders of the company Auratone Corporation. Jack Wilson and Harriet Wilson executed Last Wills and Testaments and codicils thereto and a related family trust (incorporated

into the Wills), and bequeathed their interests in Auratone Corporation and Auratone Property ultimately to or for the benefit of their children and the children of their children (see details of the documents that will be produced in further response to this request). The couple had four children, including Paul Adam Wilson, Marlaine Annette Hysell (married name), Suzanne Eve Wilson, and Michelle Elaine Jacobsen (married name). Ms. Jacobsen is the natural child of Harriet Wilson; Jack Wilson recognized her as his daughter and expressly named her in his will as one of his heirs. Harriet Wilson predeceased Jack Wilson. Jack Wilson passed away in 2005. At the time Jack Wilson passed away, his daughter Suzanne Wilson was already deceased as well and is survived by two children, Marley and Brenna. Paul Wilson was estranged and has been essentially missing, despite the family's efforts to locate him, since before Jack Wilson's death. The heirs/beneficiaries have assigned their rights in the Auratone property and brand to Michelle Jacobsen's son, Alex Jacobsen. Alex Jacobsen formed Auratone LLC in 2013 to further the legacy of the Auratone brand and is the sole member of the company.

INTERROGATORY NO. 4:

Identify all alleged successors in interest to Jack Wilson and his company.

RESPONSE:

See response to Interrogatory No. 3 above.

INTERROGATORY NO. 5:

Identify all heirs of John A. "Jack" Auratone LLC.

RESPONSE:

See response to Interrogatory No. 3 above.

INTERROGATORY NO. 6:

Describe in detail the “company” of Jack Wilson as alleged in your Notice of Opposition, including the relationship of Jack Wilson to “his company.”

RESPONSE: The company was Auratone Corporation, a California corporation. Jack Wilson was a shareholder and director of Auratone Corporation.

INTERROGATORY NO. 7:

Describe in detail all transfers and assumptions of ownership of the AURATONE mark and the business and goodwill associated with the AURATONE mark that support your contention that Auratone LLC is the successor in interest of Jack Wilson and his company.

RESPONSE: The mark was first used, and the goodwill in it inured to, Jack Wilson. He subsequently formed the company Auratone Corporation and from that point forward used the company to operate the business of Auratone and promote its brand. His name has always been associated individually with the brand. After Jack Wilson died, his surviving daughters, Michelle Jacobsen and Marlaine Hysell, heirs to his rights in the brand, regrouped to determine what to do with the legacy left by their father and his company. They were approached at least once to sell the inventory but refused to do so because they intended to keep the brand in the family. Ms. Hysell launched a website and made certain of the inventory available for sale under the Auratone brand in or about 2005. In 2006, Ms. Hysell registered the domain name auratoneproaudio.com to sell Auratone-branded products. She renewed the domain name regularly from that date. In or about 2012, Michelle Jacobsen’s son Alex Jacobsen, who was finishing business school, began plans to reinvigorate the brand and sell not only existing inventory of the classic speakers but also have a new version developed, with the blessing of

both his mother, Michelle Jacobsen, and his aunt, Marlaine Hysell. In 2013 he formed Auratone LLC, and launched a new Auratone website at auratonesoundcubes.com, announcing his plans for reinvigoration of the brand. The newly developed product was recently finished and is now for sale via the website.

INTERROGATORY NO. 8:

Identify all heirs of Jack Wilson and his company that you contend have used the AURATONE Mark in connection with audio equipment in commerce as set forth in paragraph 2 of your Notice of Opposition.

RESPONSE: Marlaine Hysell, Michelle Jacobsen, Alex Jacobsen (all c/o Everhart Law Firm PLC)

INTERROGATORY NO. 9:

Identify the custodian or custodians of records for Auratone LLC, including without limitation the accounting records, tax records, marketing and advertising records, records of expenditures for advertising and marketing of goods and services, and internet website records for any domain names owned by Auratone LLC.

RESPONSE: Alex Jacobsen

INTERROGATORY NO. 10:

Identify the custodian or custodians of records for any of the alleged successors in interest of Jack Wilson and his company to the extent these are not covered by the prior

INTERROGATORY NO. 21:

Describe in detail all facts related to Opposer's first awareness of Applicant's AURATONE mark that is the subject of US Trademark Application Serial No. 85/647325.

RESPONSE: In or around 2012, Alex Jacobsen, the principal of Auratone LLC, returned from college studies in South Africa. Around that time, Jacobsen had a conversation with an individual by the name of Doc Barendse, who notified Jacobsen that there were parties in California trying to usurp the Auratone brand. It was through investigation of the California individuals that Mr. Jacobsen encountered the Applicant.

INTERROGATORY NO. 22:

Describe in detail all facts related to Opposer's first awareness of use and registration of the AURATONE mark in the U.S. by Nixon and Krawczykowski that is the subject of U.S. Trademark Registration No. 3,283,824.

RESPONSE:

See response to Interrogatory No. 22 above.

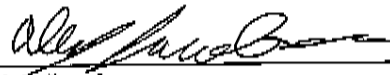
INTERROGATORY NO. 23:

Identify the channels of trade that Auratone LLC has used in connection with the distribution and sale of goods and services in the United States in connection with the AURATONE mark or any variation thereof, and the date of commencement of sale or shipment of goods and services in each identified channel of trade.

RESPONSE: Auratone LLC will produce business records from which the response to this Interrogatory may be ascertained.

**VERIFICATION FOR ANSWERS/RESPONSES TO
INTERROGATORIES**

I, Alex Jacobsen, member of Auratone LLC, declare under penalty of perjury that the facts stated in the foregoing RESPONSES AND OBJECTIONS TO MUSIC GROUP IP LTD.'S FIRST SET OF INTERROGATORIES are true and correct to the best of my knowledge, information, and belief.



Alex Jacobsen

10-31-14

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Auratone LLC,)	
Opposer,	)	Opposition No. 91216808
)	
v.	)	Application Serial No. 85647325
)	
MUSIC Group IP Ltd.	)	Published in the Official Gazette on
Applicant.	)	May 13, 2014

**AURATONE LLC’S RESPONSES AND OBJECTIONS
TO MUSIC GROUP IP LTD.’S THIRD SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Auratone LLC, submits these responses and objections to the Third Set of Interrogatories submitted by Applicant, MUSIC Group IP Ltd. (“Applicant”).

GENERAL OBJECTIONS

1. Auratone LLC objects to Applicant’s definitions and instructions to the extent they exceed the requirements of the Federal Rules of Civil Procedure.

2. To the extent any Interrogatory may be construed as calling for documents or information subject to a claim of privilege or protection including, without limitation, the attorney-client privilege or attorney work-product protection, Auratone LLC asserts such privilege and will not produce privileged documents or provide privileged information.

3. To the extent any Interrogatories may be construed as calling for documents or information that constitute trade secrets, proprietary information or competitive business data, Auratone LLC objects to such Interrogatories on that basis and will produce such information only pursuant to the terms of the Protective Order agreed to in this proceeding.

4. The responses set forth below represent Auratone LLC’s present knowledge, based on discovery, investigation and trial preparation to date. Discovery, investigation and trial

preparation are continuing. Auratone LLC expressly reserves the right to rely on any further information adduced upon completion of discovery, investigation, and trial preparation.

5. These general objections are incorporated into each of the responses set forth below, which responses are made without waiver of any of these general objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 41:

State by year the number of AURATONE branded products you had manufactured annually by, for or on behalf of you or your alleged predecessors in interest from and including 2006 to the present.

RESPONSE: Auratone LLC states the following number of AURATONE branded products were manufactured during each of the following years:

2012: 60 products
2013: 56 products
2014: 347 products
2015 to date: 824 products

INTERROGATORY NO. 42:

State by year the number of AURATONE branded products you had shipped in U.S. commerce annually by, for or on behalf of you or your alleged predecessors in interest from and including 2006 to the present.

RESPONSE: Auratone LLC states the following number of AURATONE branded products were shipped during each of the following years:

2006: 31 products
2013: 6 products

2014: 253 products
2015 to date: 50 products

INTERROGATORY NO. 43:

Identify for each year from and including 2006 to the present all AURATONE branded products sold by you or your alleged predecessors in interest.

RESPONSE: Auratone LLC states the following AURATONE branded products were sold for the following years:

2006: Parts, speakers, tweeters, and crossovers
2013: Sound cubes and speakers
2014: Sound cubes and t-shirts
2015: Sound cubes

INTERROGATORY NO. 44:

For each product identified in response to Interrogatory No. 43, identify the country of origin.

RESPONSE: Auratone LLC states the United States of America.

Respectfully submitted,

Auratone LLC, the Opposer

By: /Amy J. Everhart/
Amy J. Everhart
Maria A. Spear
Everhart Law Firm PLC
1400 Fifth Avenue North
Nashville, TN 37208
(615) 800-8919
Facsimile: (615) 800-8918
amy@everhartlawfirm.com
maria@everhartlawfirm.com

Attorneys for Opposer,
Auratone LLC

Date: February 23, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing has been served on E. Russell Tarleton of Seed IP Law Group PLLC by mailing said copy on February 23, 2015, via electronic mail to russt@seedip.com and via First Class Mail, postage prepaid, in an envelope addressed as follows:

E. Russell Tarleton
Seed IP Law Group PLLC
701 5th Avenue, Suite 5400
Seattle, WA 98104-7064

/Amy J. Everhart/
Amy J. Everhart

EXHIBIT

D

Descriptions of Auratone speaker inventory. I have described these speakers as best I can but I am sure that there are some errors.

If any of the descriptions don't seem to match the photo please ask me for further details. You may contact me at

Auratone {AT) bellsouth [dot] net

	Box 1 1 - 7" Peerless 8 ohm w/ bucking magnet		Box 1 1 - 7" Peerless 911219 8 ohm		Box 1 1 - 7" Peerless 911219 8 ohm		Box 2 4 - 5" Peerless 910321 4 ohm w/large magnet
	Box 2 4" - 7" Auratone 940623 z8 ohm (one of them is unlabeled but was in same box and is identical)		Group 4 30 - 7" Auratone (Peerless) 940623 z8 ohm (QC) {5 boxes, 6 in each}		Box 5 24 - 3" X 4" tweeters w/ straight sides 6 ohm, made in Norway		Box 6 2" - 5" Lyeco 8 ohm round shielded, very heavy
	Box 6 1" - 5" s/087/97/2, poly		Box 6 1 - 4½" round unmarked, marked large "dust cap"		Box 6 1 - 4½" mhi square big magnet, sample		Box 6 2 - 4¾" s/165/97/1 100wfr 8 ohm
	Box 6 1 - 5" mii-09-08, round Vifa		Box 6 1 - 5" c13 wg-22-08		Box 6 2 - 5" m11 mg""09-08, 1 round		Box 6 1 - 5" cii wg-08-08, "stock woofer" marked on box
	Box 6 1" - 4" cij wg-09-04, square, Vifa		Box 6 1" - 4-7/8" unmarked square w/ small magnet		Box 6 8 - 1" Peerless SR butterfly tweeters (?)		Box 6 1 - 4½" s/038/97/8 100 wfr 4 ohm
	Box 6 2" - 1½" buttons (?)		Box 6 2" - 5½" Focal technology 5koi3l (noir) square w/ black bullet dome		Box 6 1" - 4½" TB speakers round w/ sliver bullet dome 8 ohm		Box 6 2" - 4¾" PFR8 square pin-cushion Utah-Oxford
	Box 6 1 - 5" c13 wg-08, 8 ohm		Box 7 1 - 4½" mhi sample w/ big magnet		Box 7 1 - 4½" Pioneer sample, marked "acceptable"		Box 7 1 - 4½" Pioneer sample shielded, marked "acceptable"
	Box 7 2 - 4½" square shielded speakers, shielded, one w/ Auratone label		Box 7 1 - 4½" s/165/97/2-wfr 8ohm, shielded		Box 7 1" - 4½" s/038/97/9 4ohm, screen, shielded, basket cover		Box 7 1 - 4½" s/087/97/2 poly 8 ohm, not in good shape, shielded
	Box 7 3 - 4½" s/087/97/1 poly,		Box 7 4 - 4½" Auratone/Pioneer		Box 7		Box 7 1" - 5" Pioneer sample, shielded

shielded, cropped (1 in another box, a total of 4) ????		apcfrv8 - blk/sample 8 ohm, sample, a11ec80-53fj, sq., magnet scuffed on one		1 - 4½" Pioneer shielded a11ec80-02a			
	Box 7 1 - 4½" s/245/97/1 8 ohm, shielded		Box 7 1" - 4 ½ ""~ Pioneer, shielded, A11EC80- 57F/301090		Box 8 2 - 7" Peerless 900504 8 ohm		Box 8 7 - 5 ½" Peerless 910321 8 ohm w/big magnets
	Box 9 2 - 8" Peerless 8 ohm		Box 9 2 - 6" Peerless 16 ohm		Box 9 2 - 4 ½" Pioneer Sample (matched) 8 ohm square		Box 9 1" - 4 ½" Audax HM100G0 ver. 17704
	Box 9 5 - 4" Polydax 1227 4 ohm, note that one is bent but I can"™t see it		Box 10 4 - 5" Audax Two 34X0 ver.4601, plain		Box 10 3 - 5" Audax Two 34X0 ver.4602		Box 10 2 - 6" Audax HM130G0 ver.26904 w/cut- off corners
	Box 10 2 - 6" Audax HM130C0 ver. 17802		Box 10 2" - 4 ¼ Audax HM100G0 ver. 17704		Box 11 20 - 3" tweeters 0102 made in Germany Square Unknown manufacturer		Group 12 630 - 2" tweeters TW154 8 ohm square Unknown manufacturer
	Box 15 1" - 4½ " CTS/PC rough shape was pulled from box, 5804301_? _1377549		Box 15 1 - 4½ " Pioneer 57F, square		Box 15 2 - 4" Audax, square, 8 ohm, S4FR8 for 5MC & 5RMC		Box 15 1" - 4¼ " TB SpeakersW4- 6165, square bullet dome, also 1 in another box, total of 2
	Box 15 1 - 5" TB Speakers W4- 656 SB gold, translucent, shielded		Box 15 2" - 7" Peerless 180WF 33102, 8 ohm, 1 damaged, suspension very dry on other one, QC 910321		Box 16 2 - 4½ " Pioneer, yellow shielded, T10ER75- 51D/301084		Box 16 1" - 4¾ " unmarked
	Box 16 2 - 5 " Pioneer PE-12 16 ohm, heavy duty, full range		Box 16 1" - 5" Lyeco rubber, black, 8 ohms, other notes illegible		Box 16 1 - 4½ " ABC lab, woofer, D13 WA-xx- G8//ABC Labnr 38/4 4 8 ohms 2		Box 16 1 - 4½ " APC- FRV8, Shielded, no marking on speaker
	Box 16 1" - 7 " Peerless Denmark, 8 ohm, shielded		Box 16 1 - 5" Unmarked sample, black, rubber #1-2 7.10.6, 4ohms F077		Box 16 3 - 4½ " Square, "4" pic says # 8 s/b		Box 16 2"" 5" Peerless 8 ohm
Box 16			Box 16 1" - 3" Tweeter		Box 16		Box 16



2" - 3" clipped,
1" dome,
Norway

1" - 1" dome,
made in
Germany,
shielded,
tweeter, 4" metal
surround,
Quality
Loudspeakers

4½ " ABC Poly
woofer big
magnet



Box 16
1 - 4½" CIIWG-
09-04 square



Box 17
6" 5½" Vifa
Denmark



Box 17
13" - 5¼ " 32/89 , no other
marking



Box 17
1 - 4½ " ROC" -
Taiwan 8 ohm
shielded, rubbing
voice coil, not
heard w/ signal
tester



Box 17
1 - 4½ " ROC" -
Taiwan 8 ohm
shielded, rubbing
voice coil, not
heard w/ signal
tester



Box 17
1 - 4½ " RD26
sample tweeter



Group 18
36 cases of
120 pieces
each of
5CTV
crossovers



Group 19
204 - 5C
speakers *[17
boxes, 12 pieces
each*



Wall hangers



Rack mounts



Tree Locks

EXHIBIT

E

ALEX JACOBSEN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Auratone, LLC,)
) Opposition No.
 Opposer,) 91216808
)
 v.) Application
) Serial No.
 MUSIC Group IP Ltd.,) 85647325
)
 Applicant.) Published in
) the Official
) Gazette on
) May 13, 2014
)
)
)
)
)
)

DEPOSITION OF:

ALEX JACOBSEN

Taken on behalf of the Applicant

July 21, 2015

Atkinson-Baker, Inc.
ABI Job NO. A907DB6
800-288-3376
Jennifer G. Haynie, LCR, No. 403

1 A. Nope. No, sir.

2 Q. All right. Thank you.

3 Are you married or single?

4 A. Single.

5 Q. And can you give me a brief statement of
6 your educational background?

7 A. I went to University of Tennessee at
8 Chattanooga, graduated with a bachelor's of
9 science, four-year degree.

10 Q. What was the major?

11 A. Physiology and biology, so a double
12 major.

13 Q. A dual major.

14 A. Uh-huh.

15 Q. And what year did you graduate?

16 A. That would be 2012.

17 Q. And what goals did you have for using
18 those degrees?

19 A. Just life -- just general -- I wasn't
20 sure -- you know, my degree -- I wasn't degree
21 specific, what I wanted to get a degree in. It
22 was more for the experience. That's why I
23 wanted to go to college.

24 Q. Okay. So the psychology, were you
25 thinking of being a psychologist at one point?

1 at times.

2 Q. And then any other employment?

3 A. No.

4 Q. Okay. So do you consider Auratone, LLC
5 your the employer?

6 A. Well, I own it, so I guess that would be
7 my position now.

8 Q. Okay. Owner of Auratone, LLC. [REDACTED]

9 [REDACTED] [REDACTED]

10 A. [REDACTED]

11 Q. And when did you form that company?

12 A. That would be 2000 -- LLC would be 2013
13 when I formed it.

14 Q. About when in 2013? Do you remember?

15 A. In May. April or May.

16 Q. And did you form that yourself or did you
17 have an attorney help you?

18 A. I formed that myself.

19 Q. Did you do that online?

20 A. I can't remember, to be honest with you.
21 Through paperwork I filed or I did it online.

22 Q. And does Auratone, LLC have any
23 employees?

24 A. No.

25 Q. So at the present time, you're still

1 deposition of your aunt, Marlaine Hysell?

2 A. Yes.

3 (Exhibit Number 2 was marked.)

4 BY MR. TARLETON:

5 Q. The reporter has handed you what has been
6 marked as Exhibit 2. Have you seen this
7 document before?

8 A. I believe I have, yes.

9 Q. And what is this document?

10 A. It looks like an invoice to -- for
11 T-shirts, purchase of T shirts.

12 Q. And what's the date of the invoice?

13 A. April 24th, 2013. And there's one
14 May 6th, 2013.

15 Q. Okay. And who's the source -- well, this
16 is an invoice from who?

17 A. You mean -- or asking who's going to or
18 who purchased it?

19 Q. Who's it from?

20 A. The Dragonfly Screen Graphics.

21 Q. And who are they?

22 A. They do design for logos and T-shirts and
23 marketing materials, that kind of thing.

24 Q. Okay. And who was the bill sent to?

25 A. Michelle Jacobsen.

1 A. I do.

2 Q. What is this document?

3 A. It's a -- for the web developer, website
4 developer.

5 Q. And what's the developer's name?

6 A. I believe it's Rick Lear.

7 Q. Okay. And what's his company name?

8 A. Learric Media, LLC.

9 Q. And what is this for?

10 A. For developing a website for Auratone,
11 LLC.

12 Q. And did Auratone, LLC pay for this?

13 A. Yes.

14 Q. And what's the date of this service
15 agreement?

16 A. April 21st, 2014.

17 Q. And is he still providing services to
18 you?

19 A. No.

20 Q. This was a one-time thing?

21 A. Correct.

22 Q. Just to develop the web page?

23 A. Yes.

24 Q. Who hosts the web page?

25 A. Well, it was him, but now it's us. We

1 now host the page on behalf.

2 Q. Do you use an outside host or do you have
3 your own server?

4 A. I would assume it'd be our own server.
5 I'm not sure how that works. I own the domain
6 and we built the website now or I did.

7 Q. All right. So when you decided to open
8 Auratone, LLC as a limited liability company,
9 did you obtain any written transfer of trademark
10 rights in the Auratone mark from anyone?

11 A. No.

12 Q. Was that ever discussed with anyone
13 besides your attorney?

14 A. Verbally just with my aunt, my mom. No
15 written agreement -- no signed written
16 agreements. Just verbally.

17 Q. So with Marlaine Hysell and Michelle
18 Jacobsen?

19 A. Correct.

20 Q. And what were those discussions about?

21 A. Just that they agreed to let me use the
22 name or trademark --

23 Q. Okay.

24 A. -- to be more specific.

25 Q. And did you discuss with them filing an

1 canceled?

2 A. I knew -- all I really knew is that it
3 wasn't -- my grandfather did not renew his
4 trademark. And I discussed with them -- I
5 didn't discuss with them why it had been -- why
6 it had been canceled or the specifics of it. I
7 just kind of knew that it had been -- that he
8 didn't renew it.

9 Q. Did you ask them why they didn't
10 re-register the mark?

11 A. I don't remember. I don't know if we had
12 that conversation or not.

13 Q. And did your aunt, Marlaine Hysell,
14 transfer over to you any hard goods, equipment
15 or inventory --

16 A. Yes.

17 Q. -- when you decided to start Auratone,
18 LLC?

19 A. Yes.

20 Q. And when was this?

21 A. It had been in 2012 when that started, I
22 believe.

23 Q. And what did she give you?

24 A. Just inventory, you know, speakers,
25 products, equipment, all the paperwork designs,

1 A. Yes.

2 Q. And is it a residence?

3 A. Yes.

4 Q. Okay. So Auratone, LLC is doing business
5 out of your residence at this time?

6 A. Correct.

7 Q. Do you have any other facilities
8 anywhere?

9 A. No.

10 Q. Are you currently manufacturing goods?

11 A. Yes.

12 Q. And by "you," I mean Auratone, LLC.

13 A. Yes.

14 Q. And where does that manufacturing take
15 place?

16 A. At our shop.

17 Q. Do you order inventory or components from
18 other sources?

19 A. Yes.

20 Q. And then you assemble everything in your
21 shop?

22 A. Yes.

23 Q. And when did you first start assembling
24 goods in your shop?

25 A. 2013.

1 Q. Do you remember when?

2 A. Probably around, I guess, when it started
3 setting up the company or the LLC.

4 Q. Okay. And that was formed --

5 A. April or May of 2013 --

6 Q. Okay.

7 A. -- is actually when we started
8 manufacturing the new goods.

9 Q. And when did you have a sale of your new
10 goods? When was that first sale?

11 A. It would have been that summer at some
12 point. I can't remember exactly the actual
13 date.

14 Q. 2013?

15 A. Yeah. I can't remember the exact date.

16 Q. And were those goods branded with the
17 Auratone mark?

18 A. Yes.

19 Q. Had you shipped any goods in 2012?

20 A. I can't remember at this time. Possibly,
21 but I don't know. It would have been the new
22 old stock, so it wouldn't have been the new
23 manufacturing. It would have been from the
24 previous manufacturing.

25 Q. And when did your website for Auratone,

1 been marked as Exhibit 4. Do you have that in
2 front of you?

3 A. Yes.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. And what is it?

7 A. It's responses and objections to Music
8 Group's interrogatories.

9 Q. Which set of interrogatories?

10 A. The third set.

11 Q. And if we could go to Interrogatory
12 Number 41, this one requests, "State by year the
13 number of Auratone branded products you had
14 manufactured annually by, for or on behalf of
15 you or your alleged predecessors in interest
16 from and including 2006 to the present."

17 And your company's response indicates
18 that in 2012, 60 products were manufactured.

19 A. Uh-huh.

20 Q. Can you explain what products were
21 manufactured in 2012?

22 A. I believe that would be -- I think we
23 started making -- and I'm not sure of this time,
24 but I'm pretty sure those enclosures we made
25 ahead of time before we started selling them

1 later on. We had started manufacturing, I
2 guess, in 2012.

3 Q. And when you say "enclosure," can you
4 define what you mean by that?

5 A. The enclosed door to enclose the speaker,
6 the kind with the cabinet, if that makes sense.

7 Q. Yes. So you started manufacturing
8 cabinets in 2012. Was that done in your shop?

9 A. Yes.

10 Q. And who was doing that construction?

11 A. I did and my dad helped me, too.

12 Q. And your dad's name?

13 A. Paul, Paul Jacobsen.

14 Q. And then it says in 2013, 56 products
15 were manufactured.

16 A. Uh-huh.

17 Q. What products would those be?

18 A. I believe they also would have been some
19 more enclosures and I think we started to do the
20 full systems at that time.

21 Q. And can you define "full system"?

22 A. The speaker enclosure.

23 Q. So the speaker mounted in the enclosure?

24 A. Yeah.

25 Q. And when it sold to the public, are they

1 stopped manufacturing and selling --

2 A. Okay.

3 Q. -- that you gave a range of 2007 or '08
4 until 2011; is that correct?

5 A. Yes.

6 Q. And then what happened in 2011? Did use
7 in commerce of the mark "Auratone" resume for
8 audio speakers and loud speakers?

9 MS. EVERHART: Objection.

10 THE WITNESS: What year?

11 BY MR. TARLETON:

12 Q. Use in commerce.

13 A. Which year?

14 Q. Beginning around 2011, 2012.

15 A. Things were being manufactured in 2012.
16 New things were sold in -- starting in 2013.

17 Q. Okay. And so that would be by Auratone,
18 LLC or by you or Marlaine Hysell?

19 A. Auratone, LLC.

20 Q. And Auratone, LLC was formed in --

21 A. 2013.

22 Q. Does May of 2013 sound right?

23 A. Yeah.

24 Q. So before May of 2013 and after 2011, who
25 resumed the use of the mark in commerce?

1 MS. EVERHART: Objection.

2 THE WITNESS: Say the question
3 again.

4 BY MR. TARLETON:

5 Q. Between 2011 and May of 2013 when
6 Auratone, LLC was formed --

7 A. 2011.

8 Q. Right. Between 2011 and May of 2013, who
9 was using the mark "Auratone" in commence for
10 audio speakers and loud speakers that you're
11 claiming the benefit of here in your
12 application?

13 A. It is being used -- nothing was being
14 sold and manufactured at that time. There was
15 just plans to continue using the brand to start
16 the company --

17 Q. Okay.

18 A. -- or to continue the company or the
19 name.

20 Q. So during that time period, there were
21 plans?

22 A. Yes.

23 Q. Do you have any plans in writing?

24 A. No. It would be verbally. Plans in
25 writing we started in -- well, actually 2012,

1 yes.

2 Q. What was written in 2012?

3 A. Anything from manufacturing or finding
4 people to help us in manufacturing, product
5 design, lots of items.

6 Q. So do you have those documents?

7 A. Yes.

8 Q. Do you have any business plans?

9 A. No.

10 Q. Let's go to 2012. Actually, 2011 -- or
11 you said 2012 is when this started.

12 A. Yeah. Well, actually we started --
13 verbally we started talking in 2011, but I guess
14 I had plans in writing or -- it started in 2012
15 at some point.

16 Q. And when you say "we verbally," who are
17 you talking about?

18 A. That was me. I was referring to the
19 company as we. It's kind of ongoing.

20 Q. So you had plans --

21 A. Yes.

22 Q. -- to start using the mark sometime in
23 2012?

24 A. Yes.

25 Q. And did you discuss those plans with

1 anyone in 2012?

2 A. That would have been my family or
3 people -- just general family.

4 Q. And who would those be?

5 A. It would be my mom.

6 Q. Michelle Jacobsen?

7 A. Yes.

8 Q. Anyone else?

9 A. It would have been Marlaine Hysell, too,
10 when she -- you know, I was talking to her about
11 when she was letting me take over.

12 Q. And was this in person or over the phone?

13 A. Could be both possibly. I'm not sure
14 when the actual conversation took place. I just
15 knew it took place.

16 Q. Okay. Any e-mails?

17 A. No.

18 Q. And have you, up until today, prepared
19 any formal business plans for Auratone, LLC?

20 A. No.

21 Q. [REDACTED]

22 [REDACTED] REDACTED

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED] [REDACTED]

EXHIBIT

F

MICHELLE JACOBSEN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Auratone, LLC,)	
	)	Opposition No.
Opposer,	)	91216808
)	
v.	)	Application
	)	Serial No.
MUSIC Group IP Ltd.,	)	85647325
)	
Applicant.	)	Published in
	)	the Official
	)	Gazette on
	)	May 13, 2014
)	
)	
)	
)	
)	

DEPOSITION OF:

MICHELLE JACOBSEN

Taken on behalf of the Applicant

July 22, 2015

Atkinson-Baker, Inc.
ABI Job NO. A907DB7
800-288-3376
Jennifer G. Haynie, LCR, No. 403

1 Q. Did you have titles?

2 A. No.

3 Q. Did you have business cards?

4 A. No.

5 Q. Did you have a business plan?

6 A. Yes, a long-term business plan,
7 absolutely.

8 Q. Is that in writing?

9 A. I cannot -- I do not know. She may have
10 something in writing.

11 Q. Did you have any marketing materials in
12 print?

13 A. Just what was on the website, to my
14 knowledge.

15 Q. Was it the one that Marlaine was selling,
16 the old inventory?

17 A. Uh-huh.

18 Q. Did you attend trade shows?

19 A. No.

20 Q. Did you have a Yellow Page listing?

21 A. No.

22 Q. Did you have any internet presence?

23 A. Yes. Yes.

24 Q. And that would be the website for selling
25 the old inventory?

1 A. You're talking about from 2005 to 2011?

2 Q. Yes.

3 A. When it was actually in Georgia?

4 Q. Yes.

5 A. As far as just the website, would be the
6 main, main communication that we had with other
7 people, with customers I guess you call them.

8 Q. Do you know if your partnership with
9 Marlaine ever dissolved?

10 A. No.

11 Q. Does it continue today?

12 A. Yes.

13 Q. In what form?

14 A. We're sisters.

15 Q. I mean, partnership in a business sense?

16 A. We all have -- we all have -- because we
17 grew up with Auratone. I mean -- you mean like,
18 you're going to do this and I'm going to do
19 this -- that kind of. I'm not sure. nothing,
20 as far as I know legally, was ever setup -- you
21 were going to have this role, Marlaine, and I
22 was going to have that role. We always, always
23 maintained that we were all in it together, we
24 were Auratone, and we grew up with it.

25 Q. And this is you and Marlaine?

1 some interest in the company when he was in
2 college.

3 Q. And how did he express that interest to
4 you?

5 A. That it was something that he was really
6 fascinated about, that there was a big following
7 that, you know, he was just excited about the
8 whole Heritage of it, and he would say, you
9 know, I can't believe -- you know, we need to
10 get this up and going again -- this is awesome.
11 And I'd say, well, honey, your dad has a real
12 job, a real full-time job. So it has to be
13 after you graduate from college, and it was very
14 important that all of our kids graduated from
15 college. He graduated and we gave him our
16 blessings, and he's taken off with it.

17 Q. When you say you gave him your
18 blessings --

19 A. Marlaine and I both gave him.

20 Q. Verbally or in writing?

21 A. Nothing's in writing.

22 Q. Did you give him a formal assignment of
23 rights in the trademark Auratone in writing?

24 A. No.

25 Q. And today, do you have any role or

1 A. [REDACTED]

2 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 A. [REDACTED]

REDACTED

5 Q. [REDACTED] [REDACTED]

6 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9 Q. As an heir of Jack Wilson, do you know if
10 Paul has any rights to the Auratone mark?

11 A. I'm going to say, no.

12 Q. You don't know?

13 A. I don't know.

14 Q. Has any attempt been made to contact him
15 about this issue?

16 A. No.

17 Q. On your behalf?

18 A. On my behalf. I can only answer for
19 myself.

20 Q. Do you know if Marlaine has attempted to
21 reach out to him?

22 A. I do not know.

23 Q. Do you know if any relatives of Paul have
24 tried to reach him?

25 A. I do not know.